

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

7
8 DELPHI CORPORATION ET AL,

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10 Debtor.

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12 - - - - -x

13
14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17
18 January 17, 2008

19 3:22 PM

20
21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE
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P R O C E E D I N G S

THE COURT: Please be seated. Okay. We're back on the record in Delphi Corporation. When we adjourned, we left it that at least two or three objectors were going to try to speak with the debtors to see if they could resolve some of their objections, for example, Pima County and the fiduciary corporation. So first, why don't I hear of any of those -- any objections have been resolved over the course of the break?

MR. BUTLER: Thank you, Your Honor. Again, Jack Butler on behalf of the debtors. We are here, Your Honor, on that portion of the hearing. We have had a chance over the course of the noon recess to partially settle one objection and to completely settle eight other objections.

THE COURT: Okay.

MR. BUTLER: And so I'll indicate what those objections are now using the chart that is on the screen, which is page 27 of exhibit, I believe, 158.

MALE SPEAKER: Object -- could I just interrupt for one second? I apologize, but, Your Honor, in view of the scheduling that we've discussed, at least my office and I would like to go back to our office and begin to work on what we talked about, so --

THE COURT: That's fine.

MALE SPEAKER: -- if you don't mind, we'll be --

1 THE COURT: That's fine. And in that regard, let me
2 just say that we -- looking at the clock, looking at the
3 calendar for today it seemed appropriate to proceed as
4 follows with the rest of today's hearing. It appears to
5 me that the only considerable evidentiary aspect of the
6 confirmation hearing to come involves the master employee
7 or master executive compensation aspect of the debtor's
8 request for confirmation. It appeared to me to be more
9 efficient to leave that portion of the record until
10 tomorrow and that for today, we would deal with that
11 portion of Mr. Miller's testimony that doesn't deal with
12 employee matters, but rather deals with the rest of the
13 debtor's case.

14 Then I would hear oral argument on the remaining
15 objections, other than the two union objections, and then
16 we pick up tomorrow with the evidentiary record on the
17 employee/union issues.

18 So if there are people here who are here solely for
19 the employee/union matters and you don't want to stay,
20 you're certainly free to go at this point.

21 MALE SPEAKER: And what time will we resume tomorrow
22 morning, Your Honor?

23 THE COURT: Ten o'clock.

24 MALE SPEAKER: Thank you, Your Honor.

25 MALE SPEAKER: Thank you, Your Honor.

1 FEMALE SPEAKER: Thank you, Your Honor.

2 THE COURT: Okay. All right. So again, Mr. Butler.

3 MR. BUTLER: All right. So turning back again to
4 page 27 of Exhibit 158, which was the remaining
5 objections, I'll start with Pima County, which is the one
6 you asked about, Your Honor. That has been settled.
7 That's at Docket Number 11823. We have agreed to
8 represent on the record that which I think Your Honor had
9 discussed before we got off the record earlier today and
10 that is the debtors do agree that with respect to secured
11 claims post-petition interest includes interest that
12 accrues up to the date the claim is paid in full. I think
13 that, in fact, is -- they're secured claims. They get
14 interest in accordance with their claim.

15 THE COURT: If they're over secured.

16 MR. BUTLER: If they're over secured, yes.

17 THE COURT: Okay.

18 MR. BUTLER: Correct. To the extent they're secured.
19 We will add language to the confirmation order. This is
20 the same language we have agreed to with other taxing
21 authorities, just to state it on the record. There will
22 be a provision added to the confirmation order with
23 respect to secured tax claims. It says, "Notwithstanding
24 ending in Article 5.1 of the plan to the contrary, any
25 holder of the secured claim which claim arose as a result

1 of a tax secured by a lien shall retain its lien in
2 accordance with applicable nonbankruptcy law until the
3 claim is paid in full with post-petition interest as
4 provided in the plan and the payment of the secured claim
5 shall not include the treatments set forth in Article 2.2
6 of the plan. This is to make sure that they retain their
7 liens," which is this was not a liens-driven case.

8 THE COURT: All right. And that seems implicit in
9 the language anyway, but I don't mind repeating it to
10 alleviate people's concern.

11 MR. BUTLER: So that resolves Pima County 1123, so
12 they're not settled.

13 We were able to resolve audio MPEG, Inc. That's
14 at docket --

15 MALE SPEAKER: Your Honor, if I may interrupt. I'm
16 just on the line since [inaudible] you were [inaudible].

17 THE COURT: Yes, you may. Thank you very much.

18 MALE SPEAKER: Thank you very much.

19 THE COURT: Okay. Audio MPEG?

20 MR. BUTLER: Yeah, docket number -- docket number
21 11883, Audio MPEG, Inc. has also settled. I will before
22 we close the record today read a couple things into the
23 record with respect to that, everything being worked out,
24 Your Honor, but that is now resolved so I owe you that.

25 The next matter that's settled is docket number

1 11888, Fujikura America, Inc. They have -- this is a cure
2 notice issue that I believe Mr. Berger resolved earlier in
3 the matter, but this is just a cure matter. There's
4 nothing that needs to be said here on the record.

5 THE COURT: This is Fujikura, right?

6 MR. BUTLER: Fujikura. Excuse me.

7 THE COURT: Okay. Okay. So that objection is going
8 to be withdrawn?

9 MR. BUTLER: Correct, Your Honor.

10 THE COURT: All right.

11 MR. BUTLER: The next matter that's been resolved is
12 docket number 11908, the Riverside Claims, LLC objection.
13 That is a claims reconciliation matter. We're treating it
14 like we treated LSI and like we treated the other trade
15 claimants earlier. We're just going to reconcile their
16 claims. We talked to them about it in good faith --

17 THE COURT: All right.

18 MR. BUTLER: -- a commercial reasonable basis.

19 THE COURT: There's no agreement as to a certain
20 amount --

21 MR. BUTLER: No.

22 THE COURT: -- but you're going to expedite the
23 process to do it on a good faith, commercially reasonable
24 basis?

25 MR. BUTLER: Correct, Your Honor.

1 THE COURT: Okay.

2 MR. BUTLER: The next matter that's been settled is
3 we have settled completely the objection of Law Debenture
4 Trust Company of New York at docket number 11935. We've
5 partially settled the objection of Wilmington Trust
6 Company at docket number 12012 and this has to do with the
7 mechanism to address the fees that would be owed to
8 counsel for the indenture trustee. There is a mechanism
9 that will go into the proposed confirmation order. It's
10 been reviewed with the United States Trustee, I believe,
11 and is acceptable to the parties.

12 MR. FOX: Edward Fox, Your Honor, for Wilmington
13 Trust Company. Mr. Butler is correct. We gave him some
14 language to modify the provision of the plan -- or the
15 provision of the confirmation order dealing with this
16 issue. We've been advised that they've accepted the
17 language that we gave them. I've also discussed it with
18 Ms. Leonard from the U.S. Trustee's Office.

19 I would just ask Mr. Butler to confirm that we're
20 correct in our expectation that the debtors will be making
21 the distribution to the senior noteholders to Wilmington
22 Trust as a servicer to then be made to the bondholders.

23 MR. BUTLER: I assume that's correct. I'm not --
24 that wasn't part of our settlement, so I'm not -- are you
25 asking me a question out the clear blue? You know, I

1 assume that's correct, but I'd like to double-check with
2 our folks now --

3 MR. FOX: That'd be fine.

4 MR. BUTLER: -- get with you off the record about
5 the.

6 MR. FOX: Okay.

7 THE COURT: Just for my edification having reviewed
8 those objections the two indenture trustees or servicers
9 claims will be recognized on a contract basis, not a
10 503(b) basis?

11 MR. BUTLER: That's correct, Your Honor.

12 MR. FOX: Yes.

13 THE COURT: Okay. And then there's a mechanism for
14 reviewing the fees as -- under the contract?

15 MR. FOX: Yeah, I can hand up the market --

16 THE COURT: No, that's okay. I just wanted to make
17 sure I understood the basic concept of it.

18 MR. FOX: The concept is we'll submit the invoices to
19 the debtor, the committee, and the fee committee. They'll
20 have ten business days to review them. If they're in
21 accord will be paid. If they have an issue, then the
22 undisputed portion will be paid. The disputed portion
23 will be brought before Your Honor to resolve.

24 THE COURT: And will they be paid like other
25 unsecured claims?

1 MR. FOX: It'll be paid in cash.

2 THE COURT: Okay. And that resolves the lien issue?

3 MR. FOX: Once they're paid, yes.

4 THE COURT: Okay.

5 MR. JONAS: Your Honor, Jeff Jonas from Brown
6 Rudnick, the Law Debenture, and that's acceptable to us.

7 THE COURT: All right.

8 MR. JONAS: Thank you.

9 THE COURT: And then the other -- but Mr. Butler said
10 "partially settles." The other aspect of your objection,
11 Mr. Fox, was on feasibility and that's still open?

12 MR. FOX: Yes, that's correct.

13 THE COURT: Okay.

14 MALE SPEAKER: Your Honor, if I may, I don't want to
15 interrupt your train of thought, but I didn't consider
16 the -- Mr. Fox has characterized his objection as a
17 feasibility objection. The Committee considers it more of
18 just a timing of the entry of an order issue.

19 THE COURT: I'm just using shorthand.

20 MALE SPEAKER: Yeah, well, I just wanted the Court to
21 understand that notwithstanding that we didn't join in
22 Mr. Fox's feasibility objection, we do agree with him that
23 the order should not be entered until the exit financing
24 commitments have been obtained.

25 THE COURT: But that's for down the road.

1 MALE SPEAKER: Yes. I just wanted to make sure you
2 were aware of it.

3 THE COURT: All right.

4 MALE SPEAKER: Thank you.

5 MR. BUTLER: Yeah, and we at -- the Committee didn't
6 file an objection. We can argue all this in oral
7 argument.

8 THE COURT: And I was just using feasibility as
9 shorthand for that other aspect of his objection.

10 MR. BUTLER: The next objection that's been settled,
11 Your Honor, is objection -- docket number 11940, retiree
12 claims. That matter has been resolved. That had mostly
13 to do with sorting through estimated amounts for the
14 rights offering and related matters, but that has -- that
15 issue has been resolved.

16 THE COURT: Okay.

17 MR. BUTLER: I'm also pleased to report, Your
18 Honor --

19 THE COURT: Not only that issue, but the whole
20 objection is withdrawn?

21 MR. BUTLER: Correct. The whole objection has been
22 resolved.

23 THE COURT: Okay.

24 MR. BUTLER: I'm also very pleased to report, Your
25 Honor, that objection 11944, Equity Corporate Housing,

1 which was the class 6C objection has been resolved. That
2 was a claims issue, which has been resolved in the claims
3 process, but they're not pressing anything here at the
4 confirmation hearing.

5 THE COURT: Okay. And again, there are no promises
6 as to treatment of that claim. It's just going to be
7 resolved on a good-faith, expedite basis?

8 MR. BUTLER: I need to check with Mr. Lyons on that
9 one. Can I have one minute, Your Honor, so I can give you
10 the information correctly?

11 [Pause in the proceedings.]

12 MR. BUTLER: Your Honor, as I understand it, there's
13 been no special promises made here in connection with
14 this. There was -- the claim was split into two parts,
15 one that was undisputed by the debtors, which was going to
16 be allowed and the piece that the debtors do not agree
17 with is going to go through the claims process.

18 THE COURT: Okay. That's fine.

19 MR. BUTLER: Your Honor, I think that covers all of
20 the settled objections and partially settled objections.

21 THE COURT: Okay.

22 MR. BUTLER: So there should have been eight settled
23 objections. Yeah, eight settled objections and one
24 partially settled objection from the recitation I made
25 this moment at the commencement of the hearing.

1 THE COURT: All right. So --

2 MR. BUTLER: Oh, I didn't mention AT&T. I'm sorry.
3 Excuse me. Thank you. One of the eight I did not -- it
4 was within the eight. Thank you. Yeah, I have it. AT&T
5 entities, Your Honor, at 11894 is also withdrawn. I had
6 that marked as settled and I didn't read it.

7 THE COURT: Okay. And I'm assuming there was no
8 special treatment to them because their objection didn't
9 really call for it. They just -- it was --

10 MALE SPEAKER: That's right, Your Honor. It was a
11 cure issue that had --

12 THE COURT: It was the type of objection you would
13 have expected from the phone company.

14 MALE SPEAKER: Right.

15 THE COURT: Okay. All right.

16 MR. BUTLER: So, Your Honor, I believe if I have it
17 correctly -- I just want to make sure I've got it
18 correctly here.

19 MS. DOWD: Excuse me, Your Honor. Could I -- I
20 apologize that I didn't get back in the courtroom in time
21 to hear Mr. Butler's presentation about the settlement
22 with my client. I was on the phone with my client. As I
23 communicated with my client we do have a settlement, but
24 they wanted to look at the language and neither I nor my
25 client have received that language that was actually

1 written up.

2 MR. BUTLER: I can actually help you out on this. I
3 didn't read the language.

4 MS. DOWD: You didn't read it?

5 MR. BUTLER: I said that we had a settlement and I
6 would read it later on in the hearing.

7 THE COURT: Right. He did say that.

8 MS. DOWD: Thank you.

9 THE COURT: Okay.

10 MS. DOWD: And there were some subtle -- which I hope
11 you will resolve -- some subtle open terms, but I think
12 we're, you know, 95 percent there. Thank you, Your Honor.

13 THE COURT: That's what I took away from what
14 Mr. Butler said.

15 MR. BUTLER: Your Honor, I believe based on the
16 discussions we had this morning, and parties in the
17 courtroom I'm sure will correct me if I'm wrong, in terms
18 of parties who had objections that said they were
19 appearing either, you know, by the objector or by counsel
20 or another representative that we're here this morning, I
21 believe that resolves all of what I'll call the
22 represented objections other than the union objections,
23 which are being dealt with tomorrow, and the following
24 objections.

25 I believe that the Timken Company objection, docket

1 number 11927, has not been resolved. I believe the --
2 what I think are more or less -- well, I won't
3 characterize them. The objections of the lead plaintiff
4 in prospective class at 11939 and the ERISA-lead
5 plaintiffs at 11973 have not been resolved. I believe
6 that the Fiduciary Counselors, Inc. objection at 11957 has
7 not been resolved.

8 I believe the -- and let me just see here if I missed
9 one -- Equistar Chemicals was not represented earlier
10 today. They haven't [ph.] resolved, but I think they're
11 represented, so I think that is the world of the
12 represented objections.

13 THE COURT: Okay.

14 MR. BUTLER: Other than the union objections.

15 THE COURT: All right. So do you want to proceed
16 then with Mr. Miller?

17 MR. BUTLER: I do, Your Honor. Thank you.

18 THE COURT: And again, as I stated earlier, given
19 that I'm handling the discrete issue of the executive
20 employee compensation issue -- or proposal and the union
21 objections tomorrow, Mr. Miller will come back to the
22 stand if need be tomorrow on those aspects of his
23 declaration.

24 MR. BUTLER: Yes, Your Honor. So for today we're
25 dealing with the declaration of Robert S. Miller, Jr., the

1 company's executive chairman and admit it into evidence
2 Exhibit 67 subject to an evidentiary matter that we'll
3 resolve tomorrow in connection with the union portion of
4 the hearing and his deposition, which has been admitted as
5 Exhibit 551. I'd like to present Mr. Miller for all
6 purposes of cross-examination, other than the management
7 compensation portions of Exhibit 67 and Exhibit 551 and
8 for any questions the Court might have.

9 THE COURT: Okay. As far as the declaration, you're
10 going to wait until tomorrow to have it be admitted?

11 MR. BUTLER: Well, it was admitted already, Your
12 Honor, subject to the evidentiary objection of the --

13 THE COURT: Oh, that's right. Of course.

14 MR. BUTLER: -- UAW, which we'll deal with tomorrow.

15 THE COURT: That's right.

16 MR. BUTLER: We're now just presenting him for
17 examination or questions by the Court.

18 THE COURT: Okay. Does anyone want to cross-examine
19 Mr. Miller on his declaration as just discussed, as well
20 as on the topic of his deposition as just discussed?
21 Okay. And I have no questions of Mr. Miller either.

22 MR. BUTLER: Thank you, Your Honor.

23 Now, Your Honor, I believe that completes the
24 evidentiary record, other than -- I believe all of the
25 evidentiary exhibits are in with the exception of

1 resolving the evidentiary objections of the UAW on
2 Exhibits 66 and 67. That was paragraph 25 and 66 and
3 paragraph 48 on 67, two of the declarants we'll deal with
4 tomorrow.

5 I believe all of the other exhibits are now in
6 evidence and I believe all the declarations are now in.
7 See if there's cross-examination offered on all the
8 declarations other than Mr. Naylor and Mr. Bubnovich, who
9 will be dealt with tomorrow morning and the compensation
10 section of Mr. Miller's declaration.

11 So in terms of next steps, Your Honor, the debtors
12 had planned to reserve our closing argument until tomorrow
13 after the completion of whatever the proceedings are
14 tomorrow, but we'd be prepared to address objections --
15 specific objections if Your Honor wants to hear those.
16 There are a handful of, as I indicated, objectors who are
17 represented today.

18 THE COURT: I think we should use the remaining time
19 today to deal with the remaining objections, other than
20 the two union objections.

21 MR. BUTLER: All right.

22 THE COURT: Maybe I should hear from the objectors,
23 then, who are present either in person or by phone.
24 Debtors can respond to them and then they can briefly
25 address the objections made by those who are just content

1 to rely on their papers.

2 MR. BUTLER: Thank you, Your Honor. So maybe the --

3 THE COURT: So whoever -- I don't care who wants to
4 go first.

5 MS. CALOWAY: Your Honor, Mary Caloway, Buchanan,
6 Ingersoll & Rooney. I'd like to go first for one reason
7 I'm the closest and second is I think mine is one of the
8 easiest objections to discuss and resolve.

9 THE COURT: Remind me again.

10 MS. CALOWAY: It's Fiduciary Counselors.

11 THE COURT: Okay.

12 MS. CALOWAY: We had filed a joinder to the objection
13 filed by the Pension and Benefit Guaranty Corporation.

14 THE COURT: Right.

15 MS. CALOWAY: With the resolution of the Pension and
16 Benefit Guaranty Corporation's objection, that portion of
17 the joinder is essentially mooted.

18 We had also included in our joinder an independent
19 request that the debtors add four words or put on the
20 record clarification by using those four words that the
21 language in the plan didn't affect the individual debtor's
22 joint and several liability under the applicable pension
23 laws.

24 My understanding from the debtor's response is that
25 they were -- that they believe the language is abundantly

1 clear and that those four words aren't necessary. Quite
2 frankly, since I've sat here all day I've decided I think
3 it's worth it to stand up and tell Your Honor that I don't
4 think the addition of those four words harms anyone and it
5 does provide Fiduciary Counselors as the independent
6 fiduciary for the pension plans a certain amount of
7 comfort.

8 With that, Your Honor, I would sit down.

9 THE COURT: Okay. Is there any debtor that wouldn't
10 be covered individually by the minimum funding
11 requirements under 26 --

12 MS. CALOWAY: I'm sorry, Your Honor. I may not have
13 been as clear as I should have been. We were concerned
14 that the deemed substantive consolidation provision might
15 be misread to somehow affect that joint and several
16 liability.

17 MR. BUTLER: Your Honor --

18 THE COURT: No, I understand that.

19 MR. BUTLER: Your Honor, the reason we didn't agree
20 to the words is quite simply that we don't want to expand
21 any rights that may not exist.

22 THE COURT: Well, that --

23 MR. BUTLER: So consolidation only covered for voting
24 and distribution. No other purpose.

25 THE COURT: Right. They have --

1 MR. BUTLER: Whatever rights they have, they have.

2 THE COURT: That's why I was starting to ask the
3 question I had. Is there a possibility that some of the
4 debtors -- or some of the debtors on an individual basis
5 wouldn't necessarily be jointly and severally liable?

6 MR. BUTLER: And the truthful answer, Your Honor, is
7 I just don't know. I mean, and I wasn't prepared to agree
8 to language that could arguably expand liability --

9 THE COURT: Right.

10 MR. BUTLER: -- exposure when it's unnecessary given
11 what they are trying to protect.

12 THE COURT: The substantive consolidation provision
13 is for distribution for purposes of this plan.

14 MR. BUTLER: Correct.

15 THE COURT: Only.

16 MR. BUTLER: Right.

17 THE COURT: Distributions under this plan.

18 MR. BUTLER: Correct. Then only -- the actual
19 consolidating of the businesses, Your Honor, or the
20 entities to the extent that that's been planned to be
21 done, that's done under the restructuring transactions
22 notice that was filed as a separate exhibit to the plan
23 and that will occur either preeffective date or post-
24 effective date as the case may be.

25 But that -- when those things occur, they'll occur in

1 connection with the overall, you know, obligation
2 requirements the company has to go through and do those
3 combinations, liquidations, and so forth. But there's
4 nothing in the subcon portion of this plan that would
5 affect the joint and several liability -- you know, cause
6 someone's joint and several liability -- preexisting joint
7 and several liability to be eliminated.

8 THE COURT: In other words, payment in respect of --
9 under -- existing under funding will be made pursuant to
10 the plan, but if for some reason they aren't made down the
11 road, the plan doesn't affect individual debtor's
12 liability, whatever that is.

13 MR. BUTLER: Whatever that is to the extent it
14 exists.

15 THE COURT: Okay. That was my reading of the plan
16 and while we could spend a lot of time going through 26
17 U.S.C. 412 and 29 U.S.C. 1082 and 1362, I think that's
18 pretty dangerous if you have one bankruptcy lawyer, one
19 bankruptcy judge being asked to make a determination on --
20 under pension law.

21 MS. CALOWAY: 319. There are two bankruptcy lawyers,
22 Your Honor --

23 THE COURT: Okay. Two bankruptcy lawyers and a
24 bankruptcy judge, so I think it's -- I think your client
25 is protected on the issue you're concerned about and I

1 think there is a risk to the debtor that by adopting this
2 language we would be adding liability where it might not
3 exist down the road.

4 So I'm going to deny the objection, although I think
5 the record is clear.

6 MS. CALOWAY: Thank you, Your Honor.

7 THE COURT: And I think the plan is clear as well on
8 this point.

9 Okay. Does any other objector want to add to what --
10 their written objection?

11 MR. SULLIVAN: Just opening up the floor, Your Honor?

12 THE COURT: Whoever wants to go first.

13 MR. SULLIVAN: Okay. I'm happy to --

14 THE COURT: Or second actually now that -- and again,
15 you're on behalf of Timken?

16 MR. SULLIVAN: That's right, Your Honor. Mine is a
17 fairly discrete issue as well --

18 THE COURT: Let me just --

19 MR. SULLIVAN: I don't think it will take very long.

20 THE COURT: -- get that one here. I had it in front
21 of me. Okay.

22 MR. SULLIVAN: Just for the record again, James
23 Sullivan, of McDermott, Will & Emery on behalf of Timken.

24 The issue is very simple, Your Honor. I represent
25 Timken who during the course of the bankruptcy proceeding

1 entered into a settlement stipulation with the debtor.
2 Pursuant to that stipulation, the debtor and Timken
3 stipulated that Timken had an allowed claim of
4 approximately 1.8 million dollars and that the claim was
5 deemed satisfied pursuant to the previous payment of the
6 1.8 million pursuant to an assumption of an agreement that
7 had been previously agreed to.

8 The parties specifically reserved the right
9 to -- whether or not post-petition interest should be
10 payable for the period of time from the petition date
11 through the date of the payments approximately a 14-month
12 period. So we're talking -- you know, it's not a huge
13 issue, but the question in essence is because other
14 creditors, unsecured creditors in the case are being --
15 are entitled to receive interest, Timken does not believe
16 that there's any basis for not also paying interest.

17 THE COURT: I want to make sure I understand this.
18 Your client has already gotten the money, though, right,
19 as part of a cure payment?

20 MR. SULLIVAN: Without interest, Your Honor.

21 THE COURT: But as part of the assumption of the
22 contract.

23 MR. SULLIVAN: It's received the full principal
24 amount. Correct, Your Honor.

25 THE COURT: But at the time it didn't -- when it got

1 that money, when the contract was assumed and payment was
2 made under 365(b) that was the agreed amount.

3 MR. SULLIVAN: Well, the agreement specifically
4 talked about the -- you know, the prepetition balance. It
5 didn't -- it was silent as to whether or not there'd be
6 any post-petition interest payable.

7 THE COURT: But was there a reserva -- I mean --

8 MR. SULLIVAN: There's no reservation of rights, but
9 at the time there was no even indication that this would
10 be 100 percent plan and the post-petition interest would
11 even be payable and --

12 THE COURT: But isn't that the point? I mean, your
13 client made a choice at the time as to what the cure would
14 be.

15 MR. SULLIVAN: Well, generally speaking, post-
16 petition interest isn't payable until all general
17 unsecured claims have been paid in full.

18 THE COURT: No, I understand that, but under 365(b)
19 it doesn't talk about post-petition interest. It has
20 (b)(1)(A) which is the provision for curing of a default
21 and then (b)(1)(B) says "... compensates or provides
22 adequate assurance that the trustee will promptly
23 compensate a party, other than the debtor, to such
24 contract or lease for any actual pecuniary loss to such
25 party resulting from such default." Isn't that the

1 calculation you go through when you are a nondebtor party
2 to a contract that's being assumed, as well as, of course,
3 adequate assurance. I mean, it's sort of a three-part
4 test. That's your -- you can say I object. You have to
5 comply with those three parts. If you don't you can't
6 assume my contract, but it sounds like your client did
7 that. Your client went through that analysis and agreed
8 on the assumption, and there was a payment, and this seems
9 to me that it would be -- that it's barred by res judicata
10 and the law of the case. I mean, it's already happened.
11 This isn't a claim. It's a cured contract, part of the
12 assumption.

13 MR. SULLIVAN: Right. But even administrative
14 claims, even if it were treated as administrative claim
15 and not a general unsecured claim, although pursuant to --

16 THE COURT: But it's not a claim. It's been paid.

17 MR. SULLIVAN: Well, there's still a claim for post-
18 petition interest. It's only been paid in part.

19 THE COURT: But where's -- I don't -- but once it
20 was -- the claim is pursuant to the contract that's been
21 assumed. I mean, once it's assumed then unless you have
22 some other agreement on how the cure is to be paid you
23 just look to perform it's going forward. Have they
24 defaulted post-assumption?

25 MR. SULLIVAN: It's not -- that's not the issue here,

1 Your Honor. I don't know if they defaulted or not. I
2 assume that they haven't because, you know --

3 THE COURT: Okay.

4 MR. SULLIVAN: -- that's not part of our pleading.

5 THE COURT: All right. Okay. Does the debtor have
6 anything to say on this objection?

7 MR. BUTLER: Well, I mean, I know Your Honor hit the
8 salient points. One, this was an assumption back in 2006.
9 It's been assumed all the assumption obligations were by
10 admission performed. I will say generally the debtor's
11 position under this plan in this case is that -- and we
12 have discussed this in several other hearings, there is a
13 difference between cure under Section 365, which -- and
14 the payment of the prepetition claim that is still a claim
15 under a bankruptcy plan.

16 In this case, people who are being paid cash amounts
17 or cure claims in cash are not receiving post-petition
18 interest and people who chose to not -- to be treated as a
19 class 1C, general unsecured claim, receive plan currency,
20 which incl -- and got post-petition interest, but had
21 received plan currency.

22 Here, Timken which had already had its contract
23 assumed and had all -- the debtors had already fully
24 performed in connection with that assumption is now coming
25 in after the fact, should be barred to do that as a matter

1 of res judicata, but they also want sort of a hybrid
2 treatment. They want to keep the cash they were given,
3 and they want to be paid additional post-petition
4 interest, but not take the plan currency the other parties
5 are taking. There isn't any basis for this objection
6 whatsoever, Your Honor.

7 THE COURT: Okay. I agree with that. The Bankruptcy
8 Code treats executory contracts differently than claims.
9 Executory contracts are both assets and liabilities for a
10 debtor and they're -- because of that and because of the
11 balance that Congress struck, nonparties to executory
12 contracts are treated differently than those with simple
13 claims.

14 If a contract is assumed, those parties are
15 preferred. They -- as Second Circuit in *Klinesly* [ph.]
16 said, have not only the right to require compliance with
17 365(b)(1) through (A), (B) and (C), which requires cure or
18 adequate assurance, a prompt cure compensation for actual
19 pecuniary loss and adequate assurance of future
20 performance, but they also get ongoing performance as if
21 the bankruptcy hadn't happened to their contract. If the
22 debtor breaches after assumption, they have an
23 administrative claim.

24 All of those features are different than the
25 treatment of someone with a prepetition claim or a party

1 to a contract that's rejected. Here where Timken's
2 contract was assumed, apparently by agreement, the cure
3 payment paid and the other factors of 365(b)(1) satisfied,
4 I think that there's no additional claim that Timken has
5 as a prepetition claim in respect of that contract. If
6 the debtor breaches the contract or has breached it post-
7 assumption, it has an administrative claim, but there's no
8 suggestion that it does have one.

9 So I don't see a basis for an argument that a cure
10 claim that has been satisfied should be put in a class of
11 prepetition claims or has consequently any right to be
12 treated like prepetition claims. It's just -- it's really
13 apples and oranges, so I'll deny this objection.

14 MR. SULLIVAN: Okay.

15 MR. BUTLER: Thank you, Your Honor.

16 THE COURT: Okay. All right. Counsel for the
17 securities law plaintiffs and the like, both counsel,
18 we're clear in their objections, I think. At least I
19 thought they were clear. I think they were clear earlier
20 today that their concern is really a timing concern.

21 In other words, as long as the MDL settlement order
22 of this court is entered before a confirmation order, then
23 your concern about the release provisions in the
24 confirmation order goes by the boards, because the MDL
25 order with its own release language is entered before the

1 effective date. Is that right?

2 MALE SPEAKER: That's essentially correct, Your
3 Honor, the --

4 THE COURT: All right. So why don't we --

5 MALE SPEAKER: Along with the confirmation of a plan
6 embodying the settlement, so --

7 THE COURT: So why don't we put this off until the
8 end of this hearing because it may be rendered moot at
9 that point?

10 MALE SPEAKER: We're hopeful of that, Your Honor.

11 THE COURT: Okay. I know you won't, but don't let me
12 forget this point, but I think your objection for the
13 record is clear -- I'm looking at both of you -- that you
14 don't need the extra language that you all propose if it
15 turns out that I approve the MDL settlement and enter that
16 order ahead of the confirmation order.

17 MALE SPEAKER: As well as entering an order
18 ultimately confirming the plan which embodies the
19 settlement.

20 THE COURT: Well, of course. Of course. They're
21 tied together.

22 MALE SPEAKER: That's --

23 THE COURT: It just is a timing matter. If I approve
24 both, the MDL one has to get entered first.

25 MALE SPEAKER: That's absolutely correct, Your Honor.

1 THE COURT: All right. And I think given the
2 parties' careful drafting it's better to wait so that that
3 can happen as opposed to doing some redrafting now.

4 MALE SPEAKER: That's absolutely -- it's our hope
5 that it's ultimately rendered moot, Your Honor.

6 THE COURT: Okay. All right. All right. Is anyone
7 else present or on the phone who wants to argue their
8 objection to the plan? Yes.

9 MR. FOX: I was waiting to see if there were other
10 individual objections that were -- needed to go forward.
11 Edward Fox, Your Honor, on behalf of Wilmington Trust
12 Company.

13 Your Honor, this is an important issue which can be
14 dealt with with the passage of two business days, but it's
15 nevertheless important. I think it needs to be seriously
16 considered. As we stand here today according to the
17 deposition and other testimony in the debtor's case, the
18 debtor does not have yet a loan commitment for the -- I
19 guess it's 4.5 billion of exit financing that it is
20 seeking and requires as part of its plan to exit
21 bankruptcy.

22 It is in the process of getting that. As far as we
23 know, the debtor is doing whatever is necessary or
24 appropriate to do that. We understand that. We accept
25 that. The timing is such that the -- Mr. Sheehan has

1 indicated in his deposition testimony that commitments are
2 not expected until the 23rd, which is next Wednesday.
3 That means that if the hearing -- evidentiary portion of
4 the hearing completes tomorrow, Monday is a holiday,
5 there's two business days, Tuesday and Wednesday, before
6 the commitments are supposed to come in.

7 The problem comes in if the commitments do not come
8 in. If they don't come in by Wednesday, but they're
9 delayed, we'll at least find out why -- what further
10 update as you asked Mr. Sheehan might be going on that is
11 holding him up, but it's possible that they don't come in
12 with the -- under the appropriate interest cap, which is
13 required under EPCA [Ph.], or that they're delayed
14 significantly given the continued turmoil in the credit
15 markets, which I think we well know about from this case,
16 from the inability to obtain the financing that was
17 originally intended under the plan filed on September 6th,
18 and the issues that we've discussed in this case
19 throughout the fall.

20 In Mr. Sheehan's deposition testimony, he was asked
21 on page 230 --

22 THE COURT: But can I interrupt you?

23 MR. FOX: Yes.

24 THE COURT: The debtors say, and I think based on my
25 reading of the plan this is correct, the plan will not go

1 effective, distributions will not be made to anybody
2 unless the exit financing closes.

3 MR. FOX: That --

4 THE COURT: And that that's not waivable by anybody.

5 MR. FOX: Well, that's true. A couple of points,
6 though. First of all, what the statute requires is not
7 that the plan not become effective but that the plan not
8 be confirmed if there's a likelihood of a need for further
9 reorganization, which is why --

10 THE COURT: Well --

11 MR. FOX: -- in a case law typically --

12 THE COURT: But I'm trying to figure out what the --
13 the case law talks about speculative success of the
14 reorganization. The statute talks about not likely to be
15 followed by liquidation or the need for financial
16 reorganization. As a practical matter, I'm just trying to
17 figure out given that the plan wouldn't go effective
18 unless you had the financing what is the harm of having it
19 be confirmed subject to that condition?

20 MR. FOX: Well, one thing is there's no -- on a
21 practical level, there's no sunset provision in the
22 confirmation order, so if they don't get the financing --
23 it's true, they don't go effective, but it's not clear
24 that there's any particular date by which the confirmation
25 order becomes null and void and the parties go back to

1 whatever position they're in.

2 Now, when the disclosure statement went out, one of
3 the changes that was made that we asked for was to say
4 that the debtors believed that at the present time, and we
5 asked that the words "at the present time" be added, that
6 this is the best plan available.

7 It's possible that the capital markets could get
8 worse, of course. It's possible that they might get
9 better and certainly predictions had been that we go out a
10 few months that could be the case, but people voted today
11 or by last week with a certain expectation I would suggest
12 to you that they took the plan with some resignation.

13 THE COURT: And I understand and there's the interest
14 provision that cuts off interest at the end of January.

15 MR. FOX: Well, that's true, too. So if they don't
16 get their financing but the plan is confirmed, we don't
17 know -- certainly there's no drop-dead date as to how long
18 it would get stretched out, what kind of negotiation might
19 be attempted, you know, with the plan investors or
20 otherwise, what potential adjustments might be made. It
21 creates a whole host of problems and opens up a whole
22 Pandora's box.

23 THE COURT: But on the other hand, the debtors are
24 fiduciaries.

25 MR. FOX: Yes, and as good fiduciaries --

1 THE COURT: And there is an ability to terminate
2 exclusivity.

3 MR. FOX: Well, they're going to do their best to put
4 a deal together, but there's a deal on the table that
5 people have agreed to with a certain level of expectation.
6 It's with no sunset provision in the confirmation order.

7 THE COURT: But wasn't there also an expectation that
8 we might well get to confirmation before there was a
9 financing commitment or the like and, in fact, having a
10 confirmed plan subject only to that condition to go --
11 well, it's not the only condition, but that's the prime
12 condition for going effective, might well have a positive
13 effect on the financing.

14 MR. FOX: Well, I would certainly have no problem if
15 the order -- and if Your Honor entered a confirmation
16 order that said that it's the -- the confirmation order
17 was subject to their having a financing commitment.

18 In other words, we're not -- I'm not suggesting that
19 they can't make the rest of their case, that Your Honor
20 can't indicate that you're prepared to confirm the plan
21 subject only to their having the signed commitment
22 letters.

23 THE COURT: Okay.

24 MR. FOX: There's no intention to try to hold the
25 debtor up and that presumably would be helpful if that's

1 what's required. It seems to me that the two business
2 days does, in effect, and there are many time lines. I
3 can't remember them as well as I'm sure Mr. Butler.

4 THE COURT: Well, I'm not -- I don't like the two
5 business day argument, I'm afraid.

6 MR. FOX: Well, even if it's not that, the problem is
7 then --

8 THE COURT: I understand your point about -- the
9 general point, though. I understand that point.

10 MR. FOX: There's simply no drop-dead as to what
11 happens.

12 THE COURT: All right. Well, I -- that's not the
13 point I'm that fond of either. The point I understand is
14 there is a risk to parties of interest of delay beyond
15 what parties might have thought would be appropriate
16 without knowing what that date would be necessarily.

17 MR. FOX: I believe that's right, Your Honor.

18 THE COURT: Okay.

19 MR. BUTLER: Your Honor, from --

20 THE COURT: And also that it might be entirely
21 hypothetical.

22 MR. FOX: And we'll presumably know that on
23 Wednesday.

24 MR. BUTLER: No. I think that's just plain wrong and
25 I'm -- you know, Mr. Fox -- it's interesting. Mr. Fox is

1 the only -- I think only party now pressing a feasibility
2 objection at this confirmation hearing after the
3 indentured trustee was supposedly looking after
4 bondholders have now voted in favor of the plan.

5 THE COURT: Well, let me ask you, though, a question,
6 Mr. Butler, and I appreciate that point. But I have
7 had -- I inherited a plan which unfortunately had no end
8 to it, no end to its condition. That was a problem. I
9 eventually dealt with it by a motion under 60(b) and maybe
10 that's what will eventually happen here.

11 MR. ROSENBERG: Well, Your Honor, if I may this is
12 still an issue of great concern to the Committee and I
13 know you said you'll deal with it in the order, but that
14 is what we're now talking about. We have asked for the
15 placement of a sunset provision in the order. Mr. Butler
16 has refused and we'll be arguing that to you, but, you
17 know, this is a situation where you've got specific drop-
18 dead dates and other agreements, but you can have a
19 confirmation order that is absolutely incapable of being
20 consummated. You know, under the Bankruptcy Code a
21 confirmed plan after an appeal period is only
22 challengeable for fraud for a 180-day period. We could be
23 sitting here for months and months and months, but no
24 reason.

25 Now, you know, whether or not this goes -- becomes a

1 feasibility issue today, whether or not there's a
2 confirmation order entered subject to feasibility it just
3 can't be that a confirmation order is entered today, the
4 plan becomes clearly unfeasible either because of the
5 financing or because of the passage of time and everyone's
6 just hanging out there. That's just not appropriate and
7 I'm sort of interested and happy to hear that Your Honor
8 has had some experience with that. It shouldn't happen in
9 this case.

10 MR. BUTLER: On the other hand, Your Honor, we're
11 here at confirmation and I recognize Mr. Rosenberg's view
12 that, you know -- and they are the Creditors' Commission
13 is a fiduciary, but the reality is until a draft comment
14 we got from last night they had never raised the issue of
15 a sunset provision in this which we would have resisted
16 had they ever raised it.

17 THE COURT: I -- as I said to Mr. Fox, the sunset
18 provision concept to me doesn't seem to work because I
19 don't think the parties considered a sunset provision, but
20 they did consider this happening with the financing.

21 MR. BUTLER: Your Honor, I think one of the things
22 we --

23 THE COURT: And -- I'm sorry. Maybe you're about to
24 say this, but an order that says the plan is confirmed
25 subject to a commitment at which point this order becomes

1 effective is -- I don't know. What do you think about
2 that?

3 MR. BUTLER: I really hope Your Honor doesn't do
4 that. I think it adds -- it adds conditionality and
5 uncertainty into an extraordinarily uncertain market.

6 THE COURT: Well, but it's the same condition not
7 only that's there, because they know the plan won't be
8 consummated without the financing. I don't think --

9 MR. BUTLER: I'm not even sure that's a confirmation
10 order that's enforceable under the EPCA. My point is
11 we're here at confirmation to get -- to procure an order,
12 which I believe on this record we're entitled to get and
13 which we then follow what the plan says. This plan was
14 approved by 80 percent of the people who voted on it. The
15 reality is that there is very specifically a series of
16 conditions to the effective date. If we look on Exhibit
17 95, page 7, this was the chart that was in the disclosure
18 statement and again shall be talking about later, but
19 reminding Your Honor of the events we have to navigate
20 through over the next couple of months starting at the end
21 of February, and then going into March and April, and
22 things -- you know, and it's not until April frankly that,
23 you know, there are some termination rights that are
24 optional termination rights in March. ADH has a
25 termination right that comes up at the end of March, but

1 it's not all the plan investors. It's ADH.

2 GM has some rights to trigger, some in March, some at
3 the end of April. The Government has rights at the end of
4 February. We're in a very uncertain market here and the
5 debtors need the opportunity and the flexibility to
6 navigate through this marketplace and to get to a point
7 where we can get the EPCA closed, the GSA closed, and
8 financing consummated and closed that will allow us to
9 effectuate these distributions.

10 The reality is, we have never committed -- and I
11 don't know of anything in the plan and disclosure
12 statement or anything we've ever committed to that says
13 that we were going to have the financing all completed by
14 the confirmation --

15 THE COURT: No, you have it. That's why I think a
16 drop-dead date doesn't make sense. I agree with that.

17 MR. BUTLER: And, Your Honor, as we go through
18 there --

19 THE COURT: If on the other hand you never get --

20 MR. BUTLER: -- if you look at condition 12 --

21 THE COURT: -- the finan -- I mean, this is all
22 hypothetical.

23 MR. BUTLER: Right.

24 THE COURT: Let me -- what -- is what you were saying
25 is that there are other transactional termination dates

1 that will likely to be triggered if you don't get the
2 financing?

3 MR. BUTLER: Yes. And I'm also saying, Your Honor,
4 that we need the opportunity. We could all go back to
5 square one if that's what people want to do in this case
6 at some point. I know I certainly don't. I want to try
7 to get the deal --

8 THE COURT: I don't think --

9 MR. BUTLER: -- that the creditors have voted on --

10 THE COURT: -- I don't think the indentured trustee
11 wants to do that either, nor Mr. Rosenberg. I think they
12 were concerned about open-endedness. Your response is
13 there are likely termination triggers here.

14 MR. BUTLER: There are ten triggers -- ten effective
15 date requirements in Section 12.2 of the plan that's been
16 voted on by creditors and there are a series and my view
17 is that the governors on all of that are GM, in the GM, in
18 the GM and GSA and MRA and the plan investors in EPCA. I
19 want to be very plain --

20 THE COURT: And the debtors.

21 MR. BUTLER: And the debtors. But I want to be very
22 plain on this, Your Honor.

23 THE COURT: And the debtors are fiduciaries.

24 MR. BUTLER: Are fiduciaries. We're going to do
25 everything we can if Your Honor confirms this plan to get

1 it to go effective as quickly as we can get it to go
2 effective. But, you know, if we're going -- once the
3 confirmation order is entered, we then execute a rights
4 offering, you know, we're going to be working on the
5 financing. Hopefully the financing will come together.
6 You heard Mr. Sheehan's testimony today that there wasn't
7 any material change in his judgment as to the ability to
8 procure the financing, but these are uncertain markets and
9 uncertain times, and we want the ability to be able to
10 manage all the levers dealing with the EPCA, the GSA, the
11 MRA financing to get that package to all come together.
12 We would -- we intentionally have not ever come before
13 this court or the parties and pointed to a specific date
14 as to when that's going to occur. We've said publicly
15 until frankly this hearing -- we've said publicly that we
16 hope that would happen by the end of the first quarter.
17 The reality is is I think people know we're trying to do
18 our best to see if that can come together prior to any of
19 these event risks occurring starting at the end of
20 February.

21 That's going to be a function of being able to put
22 the financing together. Certainly if the debtors as
23 fiduciaries came to the conclusion that we could not
24 execute on this plan that the plan -- that the plan
25 notwithstanding everyone's best -- good faith and best

1 intentions the debtors as fiduciaries aren't going to sit
2 around for months and months or days or weeks and not do
3 anything. I don't think there's any record of us sitting
4 on our hands here. We've been extremely proactive in this
5 case.

6 But I'm looking to maximize the opportunity for
7 success here. Assuming the debtors meet their evidentiary
8 burdens and are able to get a confirmation order what
9 maximizes this is for us to be able to go in the
10 marketplace and be able to be very clear that this case is
11 essentially done. All right. This case is cooked. Here
12 are -- everything is done. The order is final. We're
13 moving on with the rights offering. We're implementing
14 the plan and that everyone understands what we need to do
15 with respect to financing and the EPCA and the GSA.

16 It's very clear that, you know, we -- the rights that
17 people have to affect those conditions are set forth in
18 the plan and it's very clear that we have to adhere to
19 those, but I think there's been a carefully negotiated
20 balance in 12.2 and 12.3 about what can be done and when
21 it can be done and by whom. We simply want to be
22 absolutely sure that we are able to maximize the
23 opportunity to get that done, so that's why, Your Honor,
24 we think it's -- we believe as the case is pointed out in
25 our response on pages 61 through 63 of our brief indicated

1 we believe that we have been able to demonstrate
2 feasibility. We believe that Your Honor is not precluded
3 certainly in this district from concluding based on the
4 uncontroverted evidence in the record that the company
5 given the fact this is a condition to the effective date
6 that the company can take into account the effective date
7 transactions in determining feasibility.

8 THE COURT: Okay.

9 MR. FOX: Your Honor, I think at this point I need to
10 make a clean record on this because I'm very disturbed by
11 what Mr. Butler has said and what the implication is of
12 what he's said.

13 First of all, the time line that he put up was the
14 time line that was used in the disclosure statement to
15 tell people all the bad things that would happen if they
16 didn't vote for the plan because if the debtor didn't meet
17 these deadlines their deal with the PBGC would fall apart,
18 their deal on the EPCA would fall apart, the deal with the
19 unions might fall apart, et cetera, et cetera.

20 In other words, it wasn't to suggest to people that
21 only those deadlines were the deadlines that would save
22 them from being stuck in limbo forever.

23 THE COURT: But there's no other deadline.

24 MR. FOX: No, no.

25 THE COURT: There's no deadline.

1 MR. FOX: But hear me out, because what those
2 deadlines were put in to tell people that this had to get
3 done now, because if it didn't get done now and it didn't
4 get done before February 29th that in effect the economics
5 could change, the parade of horrors would kick in, and
6 something worse would happen than what we have now.

7 People made a decision based in part presumably on
8 the fact that at present this was (a) the best deal they
9 were going to get, and (b) that if they didn't take it now
10 worse things would happen in the future.

11 What Mr. Butler is now saying is that people
12 actually, you know, were looking at the -- were supposed
13 to look at these time lines to think that they were going
14 to have to suffer through these deadlines and only if
15 other parties, the PBGC, the UAW, et cetera, called
16 triggers would somehow this thing fall apart, because that
17 presumably would then trigger the EPCA and let the plan
18 investors walk away.

19 THE COURT: But what else --

20 MR. FOX: That's what --

21 THE COURT: What else would you think?

22 MR. FOX: I would think that the Court would not
23 enter a confirmation order if it weren't satisfied that
24 the debtor was going to be -- had its financing, which is
25 typically the case when the debtor comes to confirmation.

1 Now, Mr. Butler also, I think, basically made the
2 argument against what his own -- what he claims his own
3 witness said in terms of --

4 THE COURT: Well, I have -- well, okay. Go ahead.

5 MR. FOX: He's arguing against the factual statements
6 or the opinion of his own witness about the financing.
7 What he stood here and said was that we're in
8 extraordinarily uncertain markets. That's all the more
9 reason not to credit the testimony in the declaration or
10 the opinion of Mr. Sheehan and it's nothing against
11 Mr. Sheehan. He's working as hard as he can. We
12 appreciate that, but it just points to the fact that
13 anybody sitting here can't predict what's going to happen
14 in the markets and whether the debtor can get the
15 financing. We hope that they will. We're not trying to,
16 you know, do something to prevent them from doing that,
17 but having a confirmation order that's completely open-
18 ended leaves the creditors in limbo and creates a real
19 problem.

20 Secondly, if you look at the testimony of Mister --
21 the deposition testimony of Mr. Sheehan, for instance,
22 when he was asked about the schedule, he was asked on page
23 240, "When is the earliest you think you will have
24 commitment for the full financing?" Answer, "The current
25 time schedule would call for a January 23rd due date for

1 commitments and JPM is working toward that exactly, but,
2 you know, to be open it is a very tough market and we're
3 working as hard as we can."

4 He was then asked, "Do you think it is a slam dunk?"
5 Answer, "I don't think anybody in this market would call
6 it a slam dunk."

7 He was asked -- let's see -- on page 287, "First, do
8 you have a view as to how likely it is that the company
9 will be able to obtain the exit financing of these under
10 the plan at a price that it can afford?" Objection by
11 Mr. Hogue and asked and answered, but you can discuss it
12 again. Answer, "The company was -- the company announced
13 earlier this week, I'm sure you're aware, we discussed at
14 the statutory committee meeting last week that we reduced
15 our exist financing by 675 million. I think that helps
16 dramatically to assure or helps dramatically to be able to
17 stay under the 585 cap and, you know, only time will
18 tell."

19 And then he was asked a question, "It helps, although
20 I believe you testified earlier that you still wouldn't
21 say it was slam dunk in the current credit market. Is
22 that correct?" Answer, "I'm not sure I was testifying
23 about the probability of staying under 585. I think with
24 respect to the 'slam dunk' comment it was more about the
25 ability to get the financing done, but maybe I'm wrong. I

1 don't think anything is a slam dunk in this market."

2 So anyway, the point is we're going to have -- as
3 Mr. Rosenberg's points out to me, we're also -- if they go
4 forward and the confirmation order is entered, a rights
5 offering is going to get triggered. You're going to have
6 people not only have to putting up money or trading rights
7 in the marketplace, because these are going to trade. If
8 people don't want to exercise them, they're freely
9 tradeable and people have the ability to buy them, we're
10 going to have a situation where people are going to be
11 buying rights on the market on a plan that may never
12 become effective. It creates extraordinary problems in
13 that circumstance.

14 The debtor is basically arguing that the creditors
15 have voted for an open-ended period of limbo that they
16 should merely trust the debtors to try and get done
17 whatever they can whenever they can get it done. I don't
18 think that's (a) what anybody bargained for, but I don't
19 think that's what the Code permits. The Court has to make
20 a determination now as to whether confirmation, not
21 effectiveness, but confirmations is likely to be followed
22 by further reorganization. With the debtor's counsel
23 standing here talking about the extraordinarily uncertain
24 markets, I don't know how you can make that determination
25 and sign a confirmation order before we have the

1 commitments.

2 MR. BUTLER: Your Honor, a couple of points. I
3 know -- I think you dealt with the drop-dead date. I'll
4 just reiterate my comment that I think that Mr. Fox's
5 pursuit of that actually damages the debtors and the right
6 to get this plan done. Put -- entering drop-dead dates I
7 think would be completely counter-productive. I'd also
8 point out that the company never represented to anyone as
9 to the exact date and time this financing would be
10 completed and there's nothing in the record that Mr. Fox
11 just read that would suggest to the contrary.

12 The evidence in Mr. Sheehan's testimony has been very
13 consistent in terms of what we're trying to get
14 accomplished. We're trying to get this done yesterday,
15 you know, and the questions that Mr. Fox said, what's the
16 earliest something that happened. We're trying to get it
17 done yesterday.

18 On the other hand, we haven't said if it doesn't get
19 done tomorrow we should go back to square one. The
20 reality is I've always believed the case law to be that we
21 have to demonstrate here in connection -- and when you
22 talk about confirmation of the plan will not lead to
23 another financial organization, I've always paid attention
24 to Texaco, which has -- and some of the other cases which
25 has been pretty clear that we're required to establish at

1 the confirmation hearing that at the emergence of the
2 debtors from Chapter 11 there's at least a reasonable
3 prospect that the debtor's earning capacity, together with
4 their ability to obtain financing and sell assets will be
5 sufficient to fund the plan. It's as of the -- you know,
6 that is -- in terms of taking the plan effective and I
7 have always understood the case to be that so long as
8 things are -- you know, so long as the debtor's business
9 plan is not so --

10 THE COURT: The Court makes the determination, not
11 the lenders.

12 MR. BUTLER: Correct. You know, and the fact of the
13 matter is that Your Honor gets to take into consideration
14 this business plan as it's been presented in the
15 evidentiary record and all of the aspects of the company's
16 restructuring. The EPCA and the very settlements and the
17 plan -- and I think Your Honor gets to take judicial
18 notice of Your Honor's prior order approving the financing
19 arrangements, albeit the structure of them, the arranger's
20 agreements, not the committed financing, but that is a
21 final order of this court.

22 THE COURT: I guess the answer to Mr. Fox's point
23 about the rights offering is if -- is that if the plan
24 does not go effective, the rights offering is null and
25 void.

1 MR. BUTLER: That's correct.

2 THE COURT: So it's not as if the debtor keeps that
3 money.

4 MR. BUTLER: We don't keep any of it. I think Mr.
5 Fox's point is that people may sell out in the marketplace
6 and they sell it in the marketplace that -- in those
7 market transactions. That's a -- I don't know what those
8 trades will be and what those agreements will be, but
9 presumably I'm assuming that if someone buys rights that
10 they later can't exercise they will have some ability to
11 go back against the seller. I'm not -- that's not for us
12 to be concerned about. We're not setting up those
13 arrangements. They are whatever the marketplace will
14 provide them in the context of the order everybody reads,
15 but the Court -- let's make no mistake. The Court is
16 ordering these things will be mattered.

17 I believe under Texaco that we have been able to --
18 we have made the showing that -- I believe the case law in
19 this circuit and district requires that we make on this
20 evidentiary record. I don't think there's anything in our
21 plan that suggests or anyone could walk away from our plan
22 believing that this company could be sitting around the
23 kind -- the length of period or anywhere close to what
24 Your Honor is dealing with in that other case. I just
25 think that's it.

1 But to put constraints on the debtor, start putting
2 one arm behind our back because a single objector here
3 whose constituency is voted for the plan says what we
4 should do here is put constrictions on the debtor's
5 ability to try to take this plan effective, I think that
6 is not in the best interests of the estate and the
7 objection should be overruled.

8 MR. FOX: Your Honor, with respect to the rights
9 offering point, this is a serious point. People may be
10 able to make arrangements with respect to the sale or
11 rights but one of two things are going to happen, because
12 there's only a 20-day window to either exercise or trade
13 the rights. Sure, if you exercise the rights then
14 presumably -- and the plan doesn't become effective the
15 rights are going to go -- the money goes back to the
16 purchaser, but it certainly seems to me that either you
17 won't be able to sell your rights at all or you're going
18 to sell them and have to buy them back effectively if the
19 plan doesn't become effective, but at the end of the 20-
20 day period, which is going to start, if there's no
21 financing the plan doesn't become effective then the
22 rights become worthless.

23 So people are being told they're going to get rights
24 that are 22 percent of their recovery and they'll
25 effectively expire worthless one way or the other if

1 there's no financing in place or they'll be severely
2 discounted if they can sell them without having the
3 obligation to take them back, but either way it kills the
4 value that people were told they were going to have with
5 respect to these rights. You can't say you've got a
6 limited window of time but this event you weren't told
7 about because we couldn't get financing --

8 THE COURT: That's what I don't -- I guess --

9 MR. FOX: Well, when does the 20-day period --

10 MR. BUTLER: Mr. Fox is just completely
11 misrepresenting this plan.

12 THE COURT: Yeah, I -- there's no date that people
13 could rely upon in the plan. If you put a sunset
14 provision in, you wouldn't have that issue either.

15 MR. FOX: Well, people are going to have the 20-day
16 period from some point in February, if I understand it
17 correctly, to ex --

18 THE COURT: No, but what I'm saying is if you put in
19 a sunset provision for the financing then that wouldn't
20 affect -- that wouldn't improve anyone's position. It
21 would just make it worse as far as the rights offering is
22 concerned.

23 MR. FOX: Well, what it would mean is you wouldn't go
24 forward with the rights offering because you'd recognize
25 the impact that the failure to have the financing by that

1 time would have on the rights offering otherwise you're
2 saying, let's go forward with the rights offering but we
3 don't have the financing. You don't know -- you talk
4 about uncertainty in the marketplace and the affect that
5 it has on the value of the rights and on the recovery,
6 that's going to have a severe impact if not a complete
7 impact on the value of the rights. That time period isn't
8 going to be delayed. Maybe Mr. Butler could tell me
9 otherwise, but I don't believe that that time period is
10 intended to be delayed until they get the -- have the
11 financing commitments.

12 So you have a process working in tandem, but one is
13 going to be affected by the other. The rights that people
14 told that they were going to get and were going to have
15 value, I think we should be able to all agree are going to
16 be severely affected by the lack of the financing because
17 the market is going to know that.

18 MR. BUTLER: And this is the problem I have with
19 these hypothetical debates in public about Mr. Fox's
20 concerns about what may or may no occur when, in fact, you
21 know, the reality here is the financing. Assuming we're
22 able in the very short term to get the circle commitments
23 from the book and get the book -- the orders in on the
24 book of financing, the reality is the documentation all
25 has to be worked out and finalized and everyone circles

1 around that. We all understand how these syndicates get
2 put together. That process is going to happen during the
3 time and was always planned over the last number of weeks
4 to be during the time whenever -- when we made the
5 decision last to do the launch after the first of the year
6 that was always going to go along with all the activities
7 necessary to get to the effective date and there is
8 nothing in the planned disclosure statement to suggest
9 otherwise. The goal -- at least the company's goal here
10 obviously is to move forward expeditiously. I think no
11 one is suggesting that we aren't. If we can pull all the
12 levers together successfully, we'll be out before the
13 first of those event risks occurs, become effective. All
14 I'm saying is if we can't do that, the debtors I think in
15 this plan bargained for the ability to try to manage those
16 event risks as fiduciaries in a way that allows the
17 debtors to implement the plan.

18 But ultimately if the plan cannot be implemented the
19 debtors and fiduciaries know what they have to do. We'll
20 be back before this court and we'll be back with the
21 committees, but I -- but to constrict the debtors,
22 particularly when I think we have met the standards and
23 met the case law that's described in detail in our brief,
24 complied with it, and we've -- and, you know, I'll remind
25 everyone this is a preponderance of the evidence burden we

1 have at the confirmation hearing and the evidence is
2 uncontroverted. You know, Your Honor, I believe that
3 we've met the standard and that these -- this objection
4 should be overruled.

5 THE COURT: All right. Section 1129(a)(11) provides
6 that "The Court shall not enter an order confirming the
7 plan if" -- and this is a quote -- "confirmation of the
8 plan is not likely to be followed by the liquidation or
9 the need for further financial reorganization of the
10 debtor or any successor to the debtor under the plan
11 unless such liquidation or reorganization is proposed in
12 the plan."

13 Wilmington Trust as indentured trustee for one of the
14 issuances of bonds under -- that the debtor -- the parent
15 debtor has issued has raised the objection that the
16 present status of the debtor's exit financing arrangements
17 requires the Court not to confirm the plan today or
18 tomorrow or enter an order doing so until the exit
19 financing is confirmed by a signed commitment.

20 The record as set forth primarily in Mr. Sheehan's
21 declaration but it's also a matter of record in the case
22 is that the debtors have entered into a best efforts
23 agreement with Citi Group and JPMorgan as lead arrangers
24 and that those parties starting earlier this month began
25 to assemble as soon as they get potential lenders with

1 respect to the exit financing.

2 Mr. Sheehan testified that the earliest date when
3 that commitment would issue would be the middle of next
4 week, but he could not confirm that it would be a "slam
5 dunk," which is something that I would expect any
6 accountant to say.

7 The other evidence in the record with respect to the
8 exit financing is evidence with regard to the debtor's
9 business plan as vetted by PWC and which serves the basis
10 for a very substantial financial commitments by the plan
11 investors led by Appaloosa.

12 The provision of the Code that I quoted, 1129(a)(11),
13 does not specify how the Court determines whether the plan
14 is not likely to be followed by the need for further
15 financial reorganization. I do not believe that the Court
16 under the present circumstances needs to defer making that
17 analysis until third parties have acted to sign commitment
18 letters, but that rather the Court can make such a
19 determination based on the present record.

20 I also believe that as Mr. Butler correctly states
21 while the burden generally for the proponent of a plan is
22 a preponderance of the evidence burden, the showing that
23 the proponent needs to make under Section 1129(a)(11) is
24 pretty clearly set forth by the language, i.e., it is not
25 likely to be followed by the need for further financial

1 reorganization.

2 I cannot make that -- I cannot find anything other
3 than that conclusion. It is not likely to be followed by
4 further financial reorganization based on today's record.
5 I believe that based upon the undertakings by Citi Group
6 and JPMorgan, based upon the debtor's business plan as
7 vetted by its professionals including PWC and by outside
8 third parties and its financials indicate that it could
9 can well support the exit financing. I appreciate that it
10 is conceivable that notwithstanding the abundance of
11 capital in the world that prospective lenders may for
12 matters completely unrelated to the debtor for some reason
13 think that normal credit analyses don't apply for the
14 month of January 2008, but that's not anywhere set forth
15 in the record.

16 I have to assume that lenders who are in the business
17 of lending money to make money will look at a company like
18 Delphi, look at its ability to repay debt, and look at
19 what it's achieved through its reorganization plan, and
20 conclude that it makes economic sense to provide the exit
21 financing. I believe furthermore that that is why in part
22 parties in interest voted on this plan, which did not
23 contemplate a drop-dead date for the exit financing, per
24 se, but instead contemplate a series of closely
25 interlocked transactions. In particular, the GM

1 settlement, the union agreements, and the plan funding
2 agreement, the EPCA that are premised upon a later date
3 and time essentially the end of March and that the parties
4 were prepared in light of that not to have a specific
5 sunset provision.

6 I believe it is also the case that the parties who
7 voted in favor of this plan would find themselves
8 prejudiced by imposing such a date. That is so I believe
9 particularly because based on what's before me in the
10 record, it seems to me that issues with regard to the exit
11 financings being available are tied less to, if at all to,
12 the debtor's inherent economic strength and ability to
13 repay that financing, but rather to rather nebulous issues
14 related to perhaps irrational lack of confidence on
15 lenders' behalf generally in the marketplace putting a
16 condition now that would limit confirmation's effect into
17 the plan or the confirmation order or delaying entry of
18 that order I think would encourage that what appears to me
19 to be irrational propensity.

20 I don't believe given that it wasn't in the plan or
21 the disclosure statement that parties would be well served
22 by imposing it now and, in fact, might be concerned that
23 it would be imposed now. As I said during oral argument
24 on this point, I do have some concern based on experience
25 in a wholly different case where I had an irresponsible

1 debtor in front of me, unlike here, that a confirmation
2 order not be entered with an undue delay between
3 confirmation and effectiveness. However, here the debtors
4 have made it abundantly clear that they are proceeding as
5 fast as they possibly can to emerge from Chapter 11.

6 In addition, there are logical decision dates in the
7 other transactions that I described and it seems to me
8 that the debtors acting as fiduciaries can be relied upon
9 not to hold the creditors hostage in a hypothetical
10 situation unless the case I remember, and if for some
11 unforeseen reason they do something like that, there's an
12 appropriate remedy for creditors.

13 Consequently, I conclude that the plan is feasible
14 under Section 1129(a)(11) and that there should not be
15 imposed on the terms of the plan an additional date that
16 the parties did not have before them when they were voting
17 on it tied to when exit financing should, in fact, be
18 permitted or alternatively there should not be a condition
19 to confirmation itself of receiving exit financing
20 commitments.

21 I believe that in sum as I have done those voting on
22 the plan look at the debtors' underlying business and
23 financial fundamentals and made their analysis that the
24 plan would be feasible and that they would receive the
25 recoveries that they assume they will receive under the

1 plan and that a part of that analysis is that the relevant
2 group of prospective or potential lenders will do the
3 same.

4 I think that was the last objection where someone was
5 represented in court. If not, you should speak up now or
6 else we'll turn to the other objections that are
7 remaining. Okay.

8 Do you just want to go down them in order,
9 Mr. Butler?

10 MR. BUTLER: I thought I would, if that's all right,
11 Your Honor.

12 THE COURT: Okay.

13 MR. BUTLER: I think the -- I'll just get myself --
14 just one moment so I can get organized.

15 All right. Your Honor, the -- just get my individual
16 objections here.

17 Your Honor, the first two objections that I would
18 deal with are the objections of Cheryl Carter (ph.).
19 These are at 11753 and 11806.

20 THE COURT: Okay.

21 MR. BUTLER: Ms. Carter wrote --

22 THE COURT: No, I've read the objections.

23 MR. BUTLER: Okay.

24 THE COURT: There --

25 MR. BUTLER: Do you want me to address them, Your

1 Honor, or --

2 THE COURT: Why don't you address them just briefly?

3 MR. BUTLER: All right. In objection 11753 Ms.

4 Carter -- both objections, they object to the parties'
5 treatment under the plan. She's objecting to the plan.
6 The fact that we filed Chapter 11, that we were
7 reorganizing and that employees were laid off. We have
8 treated this in our response as an objection to the
9 parties' treatment under the plan. I would simply argue,
10 Your Honor, that while a party may not support their
11 treatment, the plan as a whole has been accepted by the
12 requisite classes. The more -- just as importantly, the
13 memorandum of understanding with the applicable unions are
14 now the subject of final orders of this court and they
15 stand for the transactions that have been agreed to there
16 and objections to provisions in those agreements are now
17 moot having been dealt with if they were timely raised at
18 the time those agreements were approved by the Court.

19 THE COURT: Okay. I agree. The two generalized
20 objections that Ms. Carter made are ones that are overcome
21 in the first instance by the accepting vote of the class
22 in which her claim resides, secondly, by the agreement
23 with the union to which I believe she is a member,
24 although it's not clear entirely from the objection.

25 In any event, there's no particularized or specific

1 objection beyond that rather amorphous objection that she
2 does not like the plan and consequently I'll overrule the
3 objection.

4 MR. BUTLER: Thank you, Your Honor.

5 Your Honor, the next -- I believe the next objection
6 that we've not dealt with is 11811. This is a letter
7 objection dated January 7, 2008 from Darla and Allen
8 Schmidt (ph.). In this objection they objected to the
9 treatment of Delphi stock under the plan. It's a seven-
10 page handwritten letter. Again, our response to this if
11 this is treated as an objection to a particular treatment
12 under the plan in this case the -- while they may not
13 individually support the treatment, the plan as a whole
14 and the class in which they would be considered has
15 accepted the plan under the statutory requirements 1129.

16 THE COURT: I agree with that. The class vote has
17 mooted their objection or alternatively they don't have
18 standing to make that objection based on the class vote.
19 I also conclude since there are some references in the
20 letter to Mr. Schmidt's prior employment by GM that the GM
21 settlement, which is part of the plan, would override that
22 objection given my belief that that settlement is in the
23 best interests of the debtor's estate and fair and
24 equitable.

25 Therefore, that -- to the extent that I can

1 understand Mr. Schmidt's objection with regard to his
2 prior ownership of stock that it was based upon issues
3 between the debtors and GM that that objection is not well
4 taken given the merits of the GM settlement in the plan.

5 MR. BUTLER: Thank you, Your Honor.

6 The next objection to be dealt with is objection
7 11812. This is the objection of Frank X. Budelewski
8 spelled B-U-D-E-L-E-W-S-K-I. This is a two-page letter
9 objection in which Mr. Budelewski objects to the pension
10 plan described in the plan on several bases. He asserts
11 age discrimination because retirees of the age 65 is
12 entitled to cash while retirees under that age he asserts
13 is not entitled to it. He asserts because he worked for
14 General Motors for over 30 years his pension plan should
15 not have been transferred to Delphi upon separation.

16 Again, Your Honor, from the debtor's perspective and
17 legally responding to this letter objection, we believe
18 this is an objection again to the party's treatment under
19 the plan and that the class in which he would be
20 classified has voted to accept the plan.

21 THE COURT: I agree with that, again, because of the
22 class vote. The issues raised by Mr. Budelewski are not
23 ones that need to be addressed under 1129(b)(1) --

24 MR. BUTLER: Your Honor, I don't mean to interrupt,
25 but I was just passed a note that literally as we were

1 arguing this objection Mr. Budelewski resolved his
2 objection --

3 THE COURT: Okay.

4 MR. BUTLER: -- I'm told to place that on the record.

5 THE COURT: Very well. So it's moot for that reason,
6 too.

7 [Laughter.]

8 MR. BUTLER: I wouldn't normally interrupt the Court,
9 but I know Your Honor doesn't like to --

10 THE COURT: Okay.

11 MR. BUTLER: -- rule if a settlement has been
12 reached. It occurred as we were speaking.

13 THE COURT: Okay.

14 MR. BUTLER: The next objection, Your Honor, is
15 objection 11822 and this is also 12016. There are two
16 objections and this was from -- just get them -- this is
17 from Randy Halazon, H-A-L-A-Z-O-N. I believe this -- just
18 to say it, they were filed in different ways, but I
19 believe the two objections are, in fact, identical. At
20 least my information would suggest they are under two
21 docket numbers.

22 One was, I think, it was received in two different
23 places, one at Delphi, and one in the Bankruptcy Court,
24 and they were docketed separately for that reason. This
25 was an objection by Mr. Halazon to -- made several

1 objections. I think some -- one we dealt with today and
2 one you may not want to deal with until tomorrow.

3 The first objection was as a former employee of
4 Delphi he asserts the plan is unfair and inequitable to
5 the extent it doesn't include the foreign subsidiaries as
6 part of the liquidation analysis. That happens as a
7 factual matter not to be true. The liquidation analysis
8 assumes the going concern sale of the remaining nondebtor
9 businesses which are located primarily outside of the
10 United States, that's how value gets to Dashi, one of the
11 debtor's subsidiaries. It was contemplated, considered.
12 Dashi, I believe, is group two in the liquidation analysis
13 and as part of Exhibit E to the plan or rather the
14 disclosure statement. I think that was, in fact,
15 comprehended and so we'd ask -- so I think the objection,
16 number one, is incorrect and number two the class in which
17 he has -- he would participate has voted in favor of a
18 plan.

19 His other objection is an objection to management
20 compensation. Your Honor may want to take that up
21 tomorrow.

22 THE COURT: I'll carry that till tomorrow, but
23 Mr. Halazon's other objection is overruled.

24 First, it's not clear to me from his objection
25 whether he still has a stock interest. You suggested his

1 stock was sold by his pension trustee, but in any event,
2 if he has a continuing stock interest, the class has
3 accepted the plan and to the extent he's raising
4 1129(b)(1) or (b) type objections, I believe that renders
5 his objection of no effect. See, for example, In Re:
6 Jersey Medical Center, 817 F.2d 1055 (Third Circuit 1987).

7 As far as his best interest objection is concerned,
8 based on my review of the liquidation analysis the debtors
9 or the particular debtor's equity in the four nondebtor
10 subsidiaries was taken into account. To the extent he
11 suggests that something more than those foreign
12 subsidiaries equity should have been taken into account,
13 that's incorrect since the creditors of those foreign
14 subsidiaries would have first claim on their assets.

15 MR. BUTLER: All right. Your Honor, the -- thank
16 you, Your Honor. The next objection that I believe we
17 have is 11869, Equistar Chemicals, LP. Equistar seeks to
18 preserve its right of setoff and objects to the plan to
19 the extent it disallows or impairs claims to set off the
20 offset, which allegedly would result in discharge or their
21 secured claim -- their alleged secured claim without
22 providing it with the "indubitable equivalent" of its
23 claim.

24 Our response to that was that under the terms of the
25 plan secured claims, assuming claims -- including claims

1 secured by setoff to the extent those claims are
2 ultimately allowed by the Court are paid in full under the
3 plan and, therefore, there is no prejudice to Equistar.
4 There are a series of court-approved procedures both in
5 the case and in the plan about how to exercise setoff
6 rights and so if, in fact, Equistar has a valid setoff
7 right and has preserved it and is ultimately allowed by
8 the Court, the plan will provide for the payment of that
9 claim.

10 THE COURT: I agree with that based upon my reading
11 of the plan. Consequently, Equistar's concern doesn't
12 legitimately exist so its objection is overruled.

13 MR. BUTLER: Thank you, Your Honor. I think I'm
14 going to have folks help me on this, make sure I haven't
15 missed anything. I think the next one is 12013, Larry
16 Vanderpool (ph.) I think is our next --

17 THE COURT: Right.

18 MR. BUTLER: Just give me one second, Your Honor,
19 please.

20 THE COURT: In essence, I guess what I take away from
21 Mr. Vanderpool's objection is he believes in his
22 particular instance the agreement with the union was not
23 honored in some respect.

24 MR. BUTLER: Well, Your Honor, I think it actually --
25 it may be -- I think it's -- I mean, in some respects

1 perhaps it's that it may be a bit broader than that. This
2 is a January 5, 2008 two-page letter objection in which I
3 think it does go to the memorandum of understanding, but
4 I -- it's not clear to me that he's asserting the -- that
5 we haven't followed -- that the MOU provides or that the
6 information that was provided in connection with its
7 approval was misleading. It appears to me to be a
8 collateral attack on the memorandum of understanding. At
9 least that's the way I interpreted it.

10 THE COURT: Well, it may be --

11 MR. BUTLER: That may not be correct, but --

12 THE COURT: If it is, then it's barred by the order
13 approving the settlement agreement in respect of the
14 unions in the Kettering, Ohio plant. If it's something
15 less than that and a suggestion that there's been some
16 form of breach of the agreement, I believe the plan has
17 appropriate recognition of a remedy, but it's not really a
18 confirmation objection.

19 MR. BUTLER: Your Honor, and beyond that I also --
20 if, in fact, it's -- the allegation has been the debtor
21 has not performed under the memo of understanding, a
22 matter of labor law in addition to everything else, the
23 MOU and labor law has a whole set of procedures including
24 governance -- grievance procedures that would be
25 triggered but it would not be -- I mean, that's the other

1 point I guess I would make. It's hard to kind of sort out
2 what it was.

3 THE COURT: Okay. All right. In any event, as a
4 plan objection it's without merit. Not to say that
5 there's any merit to it otherwise, but it's really not an
6 objection to any provision of the plan.

7 Therefore, it's overruled.

8 MR. BUTLER: Thank you, Your Honor.

9 Your Honor, the next objection is docket number
10 12017. This is a two-page letter, but I think it's
11 actually one page. Two pages have been stapled together
12 in the way we received it, docket number 12017, Robert W.
13 Ward. Mr. Ward asserts that he's a shareholder and he's
14 entitled to the same percentage of ownership and
15 reorganized Delphi as he had in Delphi before filed his
16 Chapter 11 petition. It's essentially, I think, a ride-
17 through objection. Think should ride through the Chapter
18 11. Again, from a legal perspective I think the debtor's
19 appropriate response to this is that while he may object
20 to his treatment under the plan, the party in which he
21 is -- the class in which he has appropriately classified
22 person has voted in favor of the plan.

23 THE COURT: I agree with that again because of the
24 acceptance of the interest holder class the valuation
25 issue implicit in Mr. Ward's objection is not an issue

1 because the class has accepted the plan. Again, see In
2 Re: Jersey City Medical Center, 817 F.2d 1055 at 1062
3 (Third Circuit 1987).

4 In addition, and this really goes for all of the
5 objections that I ruled on that are based upon the
6 objector's view that he or she is entitled to greater
7 value under the plan as a shareholder I have reviewed and
8 will rely on Mr. Resnik's (ph.) declaration. Excuse me.
9 As well as Mr. Whitmir's (ph.) declaration and Mr.
10 Sheehan's declaration as to on a -- that the consensual
11 plan value is a reasonable value for purposes of a
12 consensual resolution and for setting the stock price for
13 distribution under the plan.

14 So for those reasons, the objection is overruled.

15 MR. BUTLER: Thank you, Your Honor.

16 Your Honor, the next objection is objection one -- I
17 believe it's 12079, Orville W. Wright (ph.). Mr. Wright
18 asserts that because he worked for General Motors for over
19 30 years his pension plan should not have been transferred
20 to Delphi upon separation and that his flow-back
21 opportunities to GM should have been better explained to
22 him. I think, Your Honor, whatever that complaint is, it
23 is not, I think, a cognizable objection to confirmation of
24 a plan. Mr. Wright, if he is -- in fact, has stock or has
25 claims it's hard to tell from the document that which --

1 whichever class he would have been properly classified.
2 Those classes are voted in favor of the plan and the
3 objection itself is not a cognizable objection to
4 confirmation.

5 THE COURT: I agree with that and also note that to
6 the extent the objection has implicit in it an objection
7 to the GM settlement that's part of the plan. I conclude
8 based on review of Mr. Step's declaration, as well as
9 Mr. Sheehan's and Mr. Miller's that the GM settlement is
10 again fair and reasonable and in the best interests of the
11 debtor -- the debtors and an appropriate resolution of I
12 believe, although I'm not sure one of Mr. Wright's
13 arguments in his objection that as I take it GM should be
14 responsible for his debts or for his claims.

15 MR. BUTLER: Your Honor, the next objection is docket
16 number 12080 from Keith Miller. Mr. Miller asserts that
17 he was not provided sufficient time to return his ballot
18 because he did not receive it from his proxy in a timely
19 manner. His is a one-page letter objection dated
20 January 9, 2008 and he writes from Granite Bay, California
21 to the Court indicating that his voting package from his
22 proxy agent arrived on January 8, 2008 having come from
23 proxy services in Farmingdale, New York, and then
24 describes the process he did to seek to vote on this.

25 Your Honor, I -- the responses we have are as

1 follows. First, the debtor believed that the cessation
2 (ph.) procedures order and the solicitation process
3 approved therein is a sound process. I think as evidenced
4 from the fact that over 217 million shares voted in the
5 equity class on this plan and over 80 percent of the
6 bondholders, the senior notes voted on the plan, I think
7 there is sound evidence in the voting reports Your Honor
8 has already accepted in the record to evidence that the
9 kinds of responses that were received by the voting agents
10 would belie any sort of systemic flaw in the cessation
11 procedures. I don't know this particular circumstances of
12 Mr. Brown's or Mr. Miller's relationship with his proxy
13 agent.

14 THE COURT: Do you know how much of debt or equity he
15 may hold?

16 MR. BUTLER: I don't, Your Honor.

17 THE COURT: Okay.

18 MR. BUTLER: I mean, I don't. I mean, it would need
19 to be a very large amount.

20 THE COURT: To matter.

21 MR. BUTLER: To matter in this case.

22 THE COURT: Certainly it wasn't large enough for him
23 to appear here.

24 MR. BUTLER: That's correct, Your Honor.

25 THE COURT: All right. All right. I will overrule

1 this objection first because based upon the voting
2 tabulation in the record it appears to me to be the case
3 that as Mr. Butler noted this plan unlike a lot of plans
4 had a remarkable amount of voting on it, particularly in
5 the category where you would have a proxy agent or broker,
6 i.e., the public bonds and stock. So taking Mr. Miller's
7 objection at its face without any ability to examine him
8 or his agent it appears to me that if he received his
9 ballot late that was a rare aberration.

10 Secondly, it appears highly likely to me that the
11 lateness of his ballot is moot in that as far as
12 numerocity is concerned the public debt and stock classes
13 voted in favor of the plan whether his vote would be
14 counted or not.

15 As far as dollar amount would be concerned, his claim
16 would have to be quite high, extremely high to alter the
17 vote and as I just noted he has not appeared or hired a
18 lawyer from which I can -- I believe -- reasonably infer
19 that it is not high, so that objection is overruled.

20 MR. BUTLER: Thank you, Your Honor. Your Honor, the
21 next objection is docket number 12081. This is the
22 objection of the Monroe County Water Authority.

23 THE COURT: Monroe County?

24 MR. BUTLER: Excuse me. Monroe County.

25 THE COURT: Monroe County.

1 MR. BUTLER: Yeah. Monroe County. Sorry. Monroe
2 County Water Authority from Rochester, New York. It was
3 dated -- letter to me dated January 9, 2008 and the --
4 their complaint here really goes to their treatment under
5 the plan to the extent that they have -- their claim is an
6 unsecured claim. They basically indicate that they as a
7 governmental entity can't really accept the form of
8 planned currency that's proposed in this case or in fact
9 it would be a burden on them and they explained in their
10 letter objection why that is.

11 So from the debtor's perspective this again is --
12 should, I think, be treated here today in this hearing as
13 an objection by a creditor to treatment under the plan
14 which I believe should be overruled by the Court based on
15 among other matters the class having voted in favor of the
16 plan.

17 THE COURT: All right. I also believe arguably this
18 objection was made under 1123(a)(4) and perhaps also under
19 11 U.S.C. 1122(a), but I don't believe it has merit under
20 either of those sections 1123(a)(4) provides that a plan
21 shall "provide the same treatment for each claim or
22 interest of a particular class. Unless the holder of a
23 particular claim or interest agrees to a less favorable
24 treatment." The operative word there is "claim." "...
25 the same treatment for each claim or interest of a

1 particular class." Monroe County's claim is being treated
2 the same as every other claim in the class. It is -- I'll
3 take it on faith because Monroe County isn't here to
4 establish it on a contested basis, that Monroe County may
5 have less ability to use or receive that treatment, but I
6 do not believe that's what 1123(a)(4) contemplates as
7 prohibiting disparate treatment.

8 I also believe the operative word in 1122(a) is also
9 claim as opposed to claimant and again the claim is
10 substantially similar to all other unsecured claims. I
11 also have some question as to whether as a factual matter
12 Monroe County cannot monetize its recovery in some way,
13 shape or form either through selling it or through setting
14 up some form of subsidiary, but that ultimately is neither
15 here nor there given the plain meaning of the statute and
16 the cases which the debtors have cited in their reply
17 memorandum that construe what Congress meant to preclude
18 under 1129 -- I'm sorry, 1123(a)(4) and 1122.

19 So that objection will be overruled.

20 MR. BUTLER: Thank you, Your Honor.

21 Your Honor, I believe the last objection to be dealt
22 with -- there's one other objection I'd like to go back
23 to, but the last objection we've not talked about to be
24 dealt with today I believe is objection number 12083 and
25 that's the objection of Naomi M. Frye, F-R-Y-E.

1 Ms. Frye filed a letter -- actually, a written
2 objection -- on January 10, 2008 in which she complained
3 about her treatment having purchased General Motors shares
4 in 1950 and ultimately having -- talking about various
5 spinoffs that she would have participated in including the
6 Delphi spinoff in May of 1999 and does not believe the
7 program that is proposed under the plan, in fact, works to
8 her favor and asks that the small investor be protected,
9 that all partial common stock in the corporation be paid
10 proportionately for shares in the amount at the rate of
11 7193 and that the same protection made the similar
12 shareholders as a class action suit without fees and
13 attorney's fees and costs.

14 Again, Your Honor, I think as a general response to
15 this objection we would rely on the fact that the class in
16 which Ms. Frye is situated voted in value of the plan and
17 that her objection should be overruled.

18 THE COURT: Okay. I agree with that for the same
19 reasons that I dealt with similar objections. I'd also
20 note that in light of Mr. Resnik's declaration
21 supplemented by Mr. Sheehan's and Mr. Whitmir's and my
22 review of the GM settlement that, in fact, based upon my
23 assessment of the value of these debtors the interests of
24 small investors like Ms. Frye were, indeed, well
25 represented by the equity committee and to the extent such

1 investors had securities law claims by the MDL
2 representatives.

3 So that objection will be overruled.

4 MR. BUTLER: Thank you, Your Honor. Your Honor, I'd
5 like, if I could, to go back to the docket number 11883 on
6 page 27 of Exhibit 158 that deals with the Audio MPEG,
7 Inc. objection that's been settled. I'd like to summarize
8 that settlement on the record, if I may.

9 THE COURT: Okay.

10 MR. BUTLER: This objection is intended to resolve
11 the plan objection and another related filing not being
12 heard today, which is their motion to lift stay filed in
13 the Chapter 11 case.

14 First, Delphi is agreeing to lift the stay for a
15 limited purpose of permitting the movant to perform an
16 audit under the license agreement as set forth in Article
17 6 of the license agreement.

18 Second, Delphi and MPEG agreed to work together to
19 resolve cure amounts including using reasonable efforts to
20 fulfill MPEG's requests and also providing information
21 regarding the use of the license by controlled companies
22 as defined in the license agreement. Delphi will also use
23 reasonable efforts to provide MPEG with reports that are
24 timely as required by the agreement.

25 Third, to the extent the license agreement has

1 assumed the exclusive jurisdiction provision of the
2 license agreement will apply with respect to post-
3 emergence obligations.

4 Fourth, the allowed cure amount will be paid in cash
5 provided that no cure election form was mailed to MPEG.
6 They didn't file it -- have the opportunity to file a cure
7 election and I'll deal with that a little bit later, Your
8 Honor. We, I think, discussed it in the brief. There was
9 a small group of -- maybe not so small group of cure
10 parties that we were able to verify were not mailed to
11 cure notice. Under the proposed confirmation order their
12 default has been reversed to be cash rather than the class
13 treatment, the class 1C treatment because they were not
14 given the opportunity by the debtors to consider the
15 option. Otherwise -- and given the -- we had an
16 opportunity to briefly examine the elections that were
17 sent back. The majority elections sent back were to be
18 received cash not to remain -- to receive treatment by --
19 and so that we thought that was an appropriate disposition
20 of that.

21 MPEG asserts they were in that category. We've not
22 been able to verify that yet, but if they are, they'd be
23 treated in the same fashion as those similarly situated.

24 Fifth, to the extent the license agreements rejected
25 and the licensor satisfies the second circuit standard for

1 an administrative claim then their allowed administrative
2 claim would also be paid in cash. I think that's, in
3 fact, the law.

4 Finally, claims against -- any claims that they may
5 have against -- that is, that MPEG may have against
6 nondebtors that are independent of the commercial
7 relationship between MPEG and the debtors are not covered
8 under any third-party release contemplated in Article
9 11(5) of the plan and that is certainly acceptable to the
10 debtors with respect to --

11 THE COURT: Okay.

12 MR. BUTLER: -- the particular settlement.

13 THE COURT: Is that the language that you were
14 waiting on, ma'am?

15 MS. DOWD: Yes, Your Honor. That's essentially
16 correct. The only thing I wanted to clarify for the
17 record is that the settlement is also -- encompasses MPEG
18 parent. The Audio MPEG, Inc. is owned by an Italian
19 entity, which we referred to in the pleadings as Sisvel,
20 S-I-S-V-E-L, and they're bound by this as well. They
21 filed a joint objection. It encompasses both of them.

22 And then on the point that Mr. Butler was talking
23 about as best as we know, I would be surprised if it was
24 anything other. We're not a material purchase supply. We
25 didn't get the notice. We were in the other category of

1 other executory contracts.

2 THE COURT: All right.

3 MS. DOWD: So we didn't make it an election -- we
4 weren't mailed anything and we're the fall-back category.

5 THE COURT: Okay. Well, if you can satisfy them of
6 that they've agreed to that. When you say it includes S-
7 S-V-E-L, obviously it's encompassed by it. You're not
8 conflating the two. They each have their own relationship
9 with the debtor.

10 MS. DOWD: It's one license agreement. There's
11 both -- there's only one license agreement.

12 THE COURT: Okay. But they're treated as -- they're
13 both treated as separate entities. You're not doing
14 anything more than saying that this settlement applies to
15 both of them.

16 MS. DOWD: Correct.

17 THE COURT: Okay. All right.

18 MR. BUTLER: Your Honor, I think that will dispose
19 of, I believe, all of the objections by either settlement
20 or ruling of the court other than the objections of the
21 unions carried to tomorrow and the objection, I believe,
22 of Mr. Halazon related to management conference carried to
23 tomorrow.

24 THE COURT: That portion of his objection?

25 MR. BUTLER: That portion of his objection. Other

1 than that, I think the objections have been disposed of
2 and that would conclude the debtor's presentation, Your
3 Honor, for the first day of the confirmation hearing and
4 we plan to return at ten o'clock tomorrow.

5 THE COURT: Okay.

6 MR. BUTLER: If that's acceptable to the Court.

7 THE COURT: All right. And again, just to be clear,
8 the only evidentiary portion of the record that is still
9 open is with regard to the debtor's case in support of the
10 executive compensation elements of the plan and the
11 union's objections to it.

12 In addition to that, we'll have some comments on the
13 confirmation order, but only insofar as clarifying the
14 record as to my belief, again leaving aside the issues
15 that are reserved for tomorrow, but in all other respects
16 that the 1129(a) requirements that have been met. As you
17 know, the Court has an independent obligation to review
18 those. A number of objections were settled that raised
19 certain of those issues. I considered them independently
20 and I'll address them tomorrow, but based on my review of
21 the record and review of the case law and the Code, of
22 course, I believe I'll be able to make the finding that
23 the relevant provisions of 1129(a) have been satisfied.

24 MR. BUTLER: Thank you, Your Honor. Your Honor, with
25 respect -- just I'll say here on the record so parties can

1 consider it and talk with me afterwards on this matter,
2 but with respect to the entry of the confirmation order
3 Your Honor is prepared to grant confirmation tomorrow
4 after the completion of the record and the presentations
5 relating to it and any questions Your Honor has.

6 In addition to any comments Your Honor may be making
7 we are still reviewing an additional rounds of comments
8 from the statutory committees from General Motors and from
9 the plan investors and want to complete that process in
10 good faith.

11 Your Honor can imagine what the last number of hours
12 have been like for the parties and so I think that
13 probably the prudent thing to do tomorrow if Your Honor is
14 prepared to grant confirmation would be to have the
15 parties here, the Court's -- whatever the Court has to
16 tell us, but I think I'd like the weekend to be able to
17 research and consider comments and present an order on --

18 THE COURT: Tuesday.

19 MR. BUTLER: On Tuesday.

20 THE COURT: That's fine. Unlike the case with other
21 orders, my comments so far at least are not on the
22 drafting of the order but simply to note for the record in
23 some instances why I am prepared to make the particular
24 finding. For example, a finding that the plan does not
25 run afoul of 1129(a)(4) -- I'm sorry, 1123(a)(4). Excuse

1 me. And one or two similar instances. I don't
2 contemplate giving you frankly based on my review the
3 confirmation order any substantive comments on it.

4 MR. BUTLER: Well, thank you, Your Honor. With
5 respect -- I would say tomorrow just again the one aspect
6 for the record that tomorrow -- that I will also want to
7 introduce and I just want to call the Court's attention to
8 it. On 1128(a)(5) we dealt with this in a brief, we have
9 the business of identifying officers and directors for the
10 Court or a process of their selection. With respect to
11 the subsidiary officer directors we intend to introduce an
12 exhibit tomorrow that has that so it's in the evidentiary
13 record. I think Your Honor is aware from our brief
14 there's a process that was established that's in the plan.
15 There's a selection committee that has representatives of
16 the statutory committee or designees of them of the plan
17 investors and if I'm trying to remember the -- I guess the
18 debtor. I forgot somebody. Of the debtor as -- that are
19 in the process of continuing their work on that. I think
20 they expect to have that work completed by the effective
21 date, but so it's -- we're asking for Your Honor to
22 determine our compliance of 1128(5) both in the filing of
23 the additional exhibit as it relates to the subsidiaries
24 but as to the parent company based on the process and
25 procedure that's been established in the plan in which

1 there is participation that I suggested.

2 THE COURT: Okay. That's fine. All right. So I'll
3 see you all at ten o'clock tomorrow. You can leave your
4 materials here and that includes the screen. Just the
5 last representative of the debtor check with the marshals
6 to make sure the courtroom is locked.

7 MR. BUTLER: Thank you, Your Honor.

8 THE COURT: Okay. Thank you.

9 (Proceedings concluded at 5:26 PM.)
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C E R T I F I C A T I O N

I, Pnina Eilberg, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

January 23, 2008

Signature of Transcriber

Date

Pnina Eilberg

typed or printed name